

# CALIFORNIA'S WORKERS' COMPENSATION PROGRAMS

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# DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) – OVERVIEW

- Acting Director Chuck Cake
- 5 major divisions; related boards & commissions
  - Labor Commissioner (Div. Labor Standards Enforcement)
  - Division of Workers' Compensation
  - Cal/OSHA Enforcement & Consultation (Div. Occ. Safety & Health)
  - Labor Statistics & Research (DLSR)
  - Div. Apprenticeship Standards (DAS)
- State Mediation & Conciliation Service (transit districts, school districts, other employers who request state mediation services for collective bargaining disputes or grievance/arbitration matters (415-703-4882))
- Industrial Welfare Commission (IWC) adopts wage & hour standards (916-322-0167)

# DIR STRATEGY

- **INCREASE COMPLIANCE** with CA workplace and labor standards laws with:
  - Education and targeted assistance
  - Help us develop resources that work for you
- **TARGET ENFORCEMENT**
  - Level the playing field against unfair competition
  - Help us target our enforcement actions on employers who choose to do business in violation of CA labor laws
- **EXPAND RESEARCH** about CA work life to support better policy decisions

# WHY SMALL EMPLOYERS ARE IMPORTANT TO DIR

- Contribute millions to the state gross domestic product
- Provide jobs for millions of workers in the state
- Help build the economic base for thousands of communities in CA
- You face some of the biggest challenges – smaller margins; more non-English speaking and culturally diverse employee populations; more turnover after training; more personal risk and involvement in the business

# **ABC's of WORKERS' COMPENSATION IN CA**

- Historic bargain in 1917 between employers and employees
- Constitutional Framework (Art. XIV, § 4):
  - Compensation, irrespective of fault
  - Full medical 'to cure and relieve from the effects of injury'
  - Full provision to secure safety in workplaces
  - Adequate insurance coverage or other security
  - A State Compensation Insurance Fund
  - Dispute resolution system to "...accomplish substantial justice in all cases expeditiously, inexpensively and without incumbrance of any character..."

## ABC's (con't.)

- All California employers must have workers' compensation insurance or obtain a certificate of self insurance
  - Failure to secure this liability can result in order shutting down workplace, civil penalties per employee, duty to repay state for any benefits paid out by the Uninsured Employers Fund (UEF), and possible criminal prosecution

## ABC's (con't.)

- Most workers comp claims are resolved at the workplace
  - Over 900,000 WC claims/year
  - Approximately 200,000 result in litigation/year
- Threshold issues:
  - Injury; 'employee'; 'AOE/COE' – arising out of and in the course of employment; extent of benefits

## ABC's (con't.)

- **Medical treatment benefits** – treatment and pharmaceuticals to recover (“... to ‘cure or relieve’ from the effects of the injury”)
- **Indemnity benefits**
  - **Temporary Disability Indemnity (TDI)** – weekly benefit while unable to work; 2/3's average weekly wage
  - **Permanent Disability Indemnity (PDI)** – weekly benefit calculated from % of permanent disability from injury; compensates for level of disability and its impact on ability to compete in the open labor market
  - **Death Benefits**
- **Vocational Rehabilitation benefits** – if is QIW (Qualified Injured Worker)
  - VR indemnity; vocation counseling & retraining
  - Cap of \$ 16,000
- Specified **medical/legal expenses** to prove claim



# **KEY AGENCIES IN THE CA WORKERS' COMP SYSTEM**

- **4 Programs in DIR**
  - **Division of Workers' Compensation (DWC)**
  - **Industrial Medical Council (IMC)**
  - **Workers' Compensation Appeals Board (WCAB)**
  - **Commission on Health, Safety and Workers' Compensation (CHSWC)**
- **State Compensation Insurance Fund (SCIF)**
- **Department of Insurance – John Garamendi**
  - **Workers Compensation Insurance Rating Bureau (WCIRB)**

# **DIVISION OF WORKERS' COMPENSATION (DWC)**

- **Administrative Director – Richard Gannon**
- **Trial level court proceedings** of the WCAB (Workers' Compensation Appeals Board) to resolve disputes on claims
- **87% DWC personnel work in court system**

# Other DWC Functions

- **Adopts medical fee schedules**
  - Official Medical Fee Schedule for treating physicians charges; Medical Legal Fee Schedule for forensic physician reports; In Patient Hospital Fee Schedule for hospital charges
  - New in AB 749: Pharmaceutical Fee Schedule; Outpatient Surgical Facility Fee Schedule
- **HCO (Health Care Organization) unit** – certifies medical providers/groups/plans to use occupational medicine and organized delivery system approach to treating workers' compensation injuries (new mandates in AB 749)

# Other DWC

- Decides **petitions to change treating physician**
- **Audit Unit** - audits claim handling practices of workers' comp insurers
- **DEU Unit** (Disability Evaluation Unit) - provides permanent disability ratings
- **Rehabilitation Unit** – review vocational rehabilitation plans and proposed settlements of VR benefits
- **Research Unit** – collects & reports data on workers compensation cases

# INDUSTRIAL MEDICAL COUNCIL (IMC)

- 19 medical provider members and 1 medical economist; appointed by Governor, Senate Pro Tem or Speaker
- Certify, appoint and discipline Qualified Medical Evaluators (QMEs)
- Issue “panels” of QMEs to unrepresented workers
- Recommend reasonable fees for medical treatment and medical/legal fee schedules
- Develop treatment guidelines and evaluation guidelines
- Medical provider education

# WORKERS' COMPENSATION APPEALS BOARD

- First level of appeal from trial level decision of WC Administrative Law Judge
- 7 members (minimum 5 CA. attorneys)
- Chairperson: Merle Rabine
- Appointed by Governor for 6 year terms
- Decision by majority
  - Panel of 3; randomly selected
  - Precedential *EN BANC* decisions signed by all

# **COMMISSION ON HEALTH, SAFETY & WORKERS COMPENSATION (CHSWC)**

- 8 member commission; 4 labor members/4 employer members; meets monthly
- Studies, analyzes and reports on how parts of the CA workers compensation system work and on policies issues in the CA workers comp system
- Studies have included Permanent Disability System, Judicial System of the WCAB, the Audit System, the Pharmaceutical and Out Patient Surgery Facility Fee Schedules

# DEPARTMENT OF INSURANCE

- Regulates companies selling insurance in CA  
– including WC
- Regulates agents and brokers
- Adopts 'recommended' pure premium rates for WC insurance
- **WCIRB** collects data from all WC insurers; tracks all WC policies; issues studies; recommends WC pure premium rate increases



# RESOURCES FOR EMPLOYERS ABOUT WORKERS COMPENSATION

- **Employers' Guide to the Workers Compensation**
  - Available free on request from DWC (415-703-4600 [SF]; 916-263-2741 [Sacto])
  - Download from DWC website:  
[www.dir.ca.gov/DWC/erguide.pdf](http://www.dir.ca.gov/DWC/erguide.pdf)
  - Summary of reforms in AB 749:  
[www.dir.ca.gov/DWC/whatsnew.htm](http://www.dir.ca.gov/DWC/whatsnew.htm)
- **Various CHSWC studies**
  - Free on request from CHSWC (415-703-4220)
  - Download from CHSWC website:  
[www.dir.ca.gov/CHSWC/allreports.html](http://www.dir.ca.gov/CHSWC/allreports.html)

# **RETURN TO WORK PROGRAM**

## **AB 749**

- Return to Work Consultation Program
- Reimbursements to Employers
  - Wage Subsidies
  - Reimbursement for costs of workplace modifications
  - Premium Rebate extension
- Analysis of Implementation

# **RETURN TO WORK PROGRAM**

## **(LC 139.47)**

- **DIR Policy & Education on RTW**
  - Goal: Inform, show & assist employers & injured workers to experience the mutual benefits of early & sustained return to work within medical work restrictions
- **Develop & distribute educational materials**
  - Easily understandable; print & electronic materials
  - Useful for employers, health care providers, employees, labor unions
  - Discuss early RTW, assessing function abilities & limitations, appropriate work restrictions, job analyses, worksite modifications, assistive devices, resources available

# **RETURN TO WORK PROGRAM**

## **(LC 139.47b)**

- Training programs
  - For employer & employee organizations & health care providers
  - Address accommodation of injured worker and prevention of re-injury

# **REIMBURSEMENTS FROM RTW PROGRAM (LC 139.48)**

- AD shall pay wage reimbursement, workplace modification expenses and premium reimbursement as allowed in this section.
- **WAGE SUBSIDIES**
  - Except public agencies, employers may apply for reimbursement for injured employees who return to modified or alternate work while TD from WC RTW Fund:
  - Up to 50% of wages; For no more than 90 days, or until full duties or P&S whichever is first.
- **WORKPLACE MODIFICATION COSTS**
  - All employers (incl. Public agencies) may be reimbursed \$1,250 for modification for TD and \$2,500 for modification for QIW.

# **REIMBURSEMENTS FROM RTW PROGRAM LC 138.49b**

- **WC INSURANCE PREMIUM REIMBURSEMENTS**
  - SMALL EMPLOYERS (with 100 or less employees)
    - 100% of premium paid for employee returned to work for up to 2 years
  - MEDIUM & LARGE EMPLOYERS (more than 100 employees)
    - 50% of premium paid for employee returned to work for up to 2 years
  - Reimbursement payable in years after employer already received refund from insurer of one year's premium per Labor Code 4638
- This section is operable as of July 1, 2004 and sunsets on January 1, 2009.
- Payments made from Return-to-Work Fund. Fund revenue from WC insurance premium taxes.

# **IMPACT STUDY ON RTW**

## **(LC 138.48)**

- AD must contract with independent research organization & report findings by 1/1/2008
- Use 2 years' RTW program data & report on :
  - Effectiveness of wage, workplace modification and premium reimbursements
  - Participation rates by insured and self insured
  - Compare rates of use of modified & alternative work before & after RTW program
  - Evaluate whether any increase in sustained RTW
  - Impact on injured workers
  - Cost effectiveness of program & potential future funding mechanisms

# **AB 749 MEDICAL STUDY (LC 127.6)**

- **DWC to study, in consultation with CHSWC and Industrial Medical Council (IMC):**
  - **Factors leading to rises costs & utilization of medical treatment & case management in WC**
  - **Case management that achieves early & sustained RTW**
  - **Performance measures for medical TX reflecting patient outcomes**
  - **Physician utilization, quality of care & outcome measurement data**
  - **Patient satisfaction**
- **Report findings to Legislature by July 1, 2004**



# Goals for the WC Court System

- **Stability**
  - **Appropriate, adequate court staff**
  - **Avoid general fund budget swings that cause backlogs, staffing shortages, other disruptions to consistent performance**
- **Service**
  - **Expeditious dispute resolution**
  - **Predictable court procedures**
  - **Efficient party participation**
- **Savings**
  - **Up to \$ 300 - 500 mill/year in reduced costs to employers**
  - **More savings with case calendaring/management system and electronic filing**

# Shared Priorities

- Governor's Priority 1999: Fix the court system
- RAND study on WC judicial system (2000-2003):
  - “...the primary source of the complaints from the workers' compensation community is the chronic funding shortage which has hampered hiring, training, and technological improvements for decades.”
- All stakeholders (incl. Employers) highest priority (November 2002 public meeting):  
“Fix the court system first”

# What's Preventing the Fix?

- Budget deficit doubled since 2/02 when AB 749 signed, preventing 1/1/03 implementation of savings work
- 2/02 (est.) \$ 13 - 17 billion
- 3/03 (est.) \$ 34.7 billion

# Stable Source of Funding

- Needed to achieve:
  - Efficiency in courts
  - Reduce costly delays
- 1972 National Commission on State Workmens (sic) Compensation Laws:
  - Adequate staff and financing
  - Financing cannot be subject to wide swings year to year
  - Recommended WC agency be financed by assessment on WC premiums (user funding)

# Why is the Governor Proposing User Funding Now

- Stabilize the court system
- Avoid further delays in resolving disputes due to general fund reductions
- 40 of 50 states have 100% user funding for WC
- Achieve over \$ 1 billion in employer savings by implementing AB 749 reforms

# Savings by AB 749 Reforms

<b>Repeal Treating Physician Presumption</b>	<b>\$ 600 million</b>
<b>Pharmaceutical and other Fee Schedules</b>	<b>\$ 300 million</b>
<b>Return to Work Programs</b>	<b>\$ 180 million</b>
<b>Settlements of VR</b>	<b>\$ 150 million</b>
<b>Admin. Efficiencies &amp; lien resolutions</b>	<b>\$ 70 million</b>

# Partial User Funding in CA Now

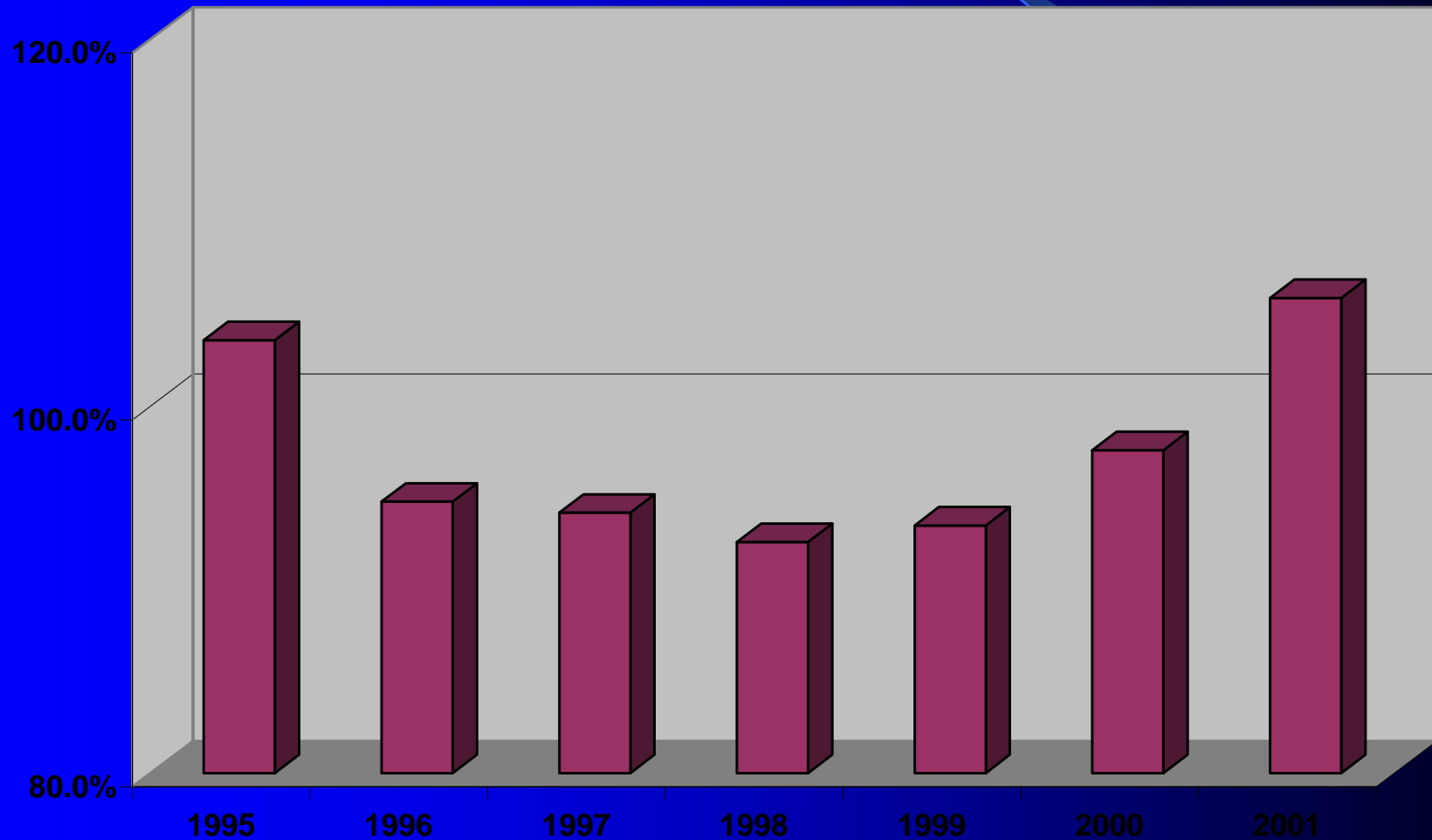
- All employers pay 20% of WC costs for DWC, WCAB, IMC and CHSWC
- Insured employers pay % of premium
- Self insured employers pay % of indemnity paid
- Shares paid by insured & self insured employers in proportion to payroll
- Assessments paid in January and April

# What is the ROI?

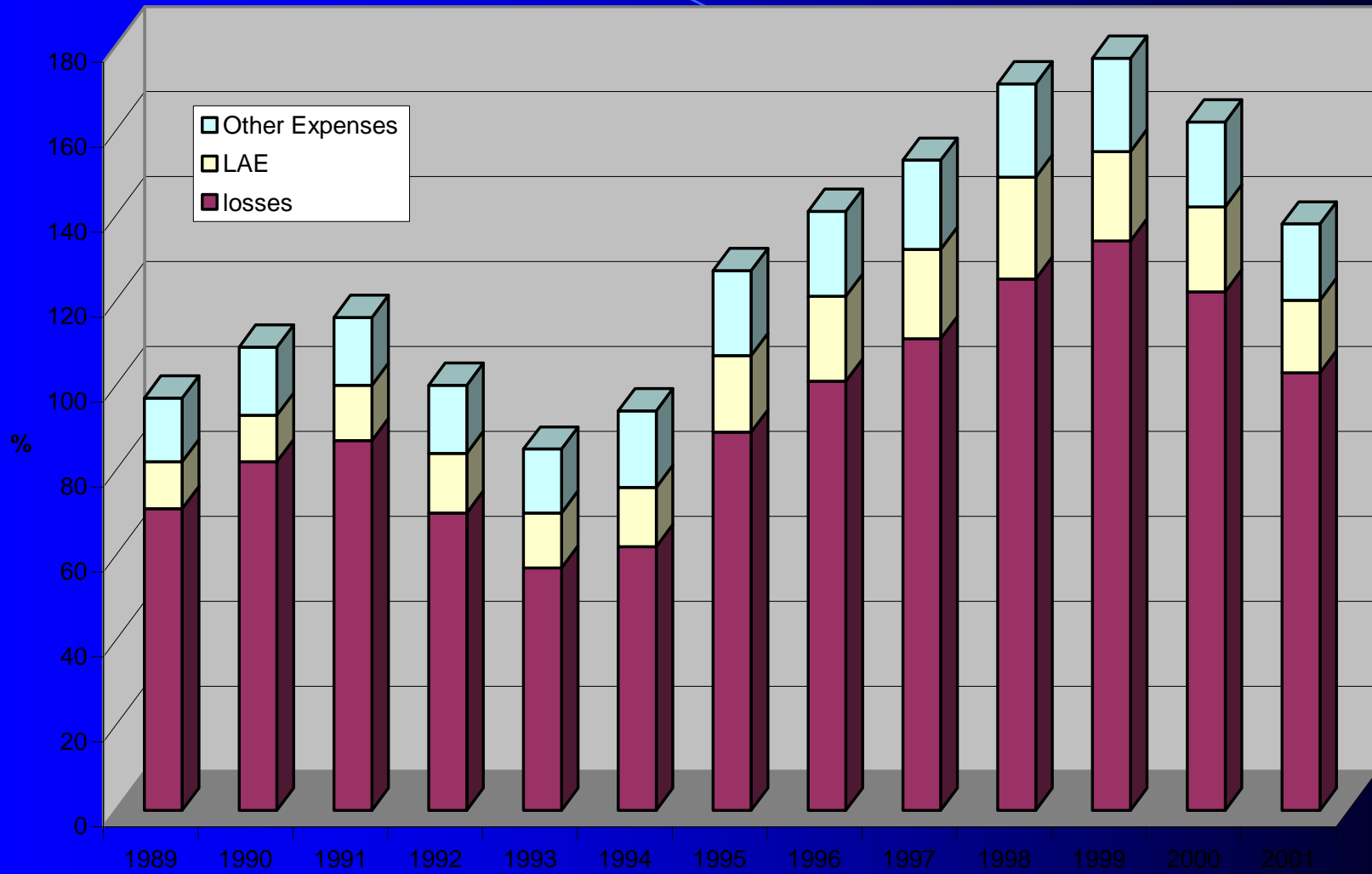
- Return on investment for employers
  - \$ 104 million for over \$ 1 billion in AB 749 savings plus additional savings of \$ 300 - 500 million per year for court system
- Cost to Employer
  - Less than 4/10ths of 1% of an employer's premium
  - Increase employer's *annual* labor costs by only
    - \$ 5.43 per worker covered per year, or
    - Less than 3/10ths of 1 cent per hour worked



# Written Premium as % of Pure Premium Rates

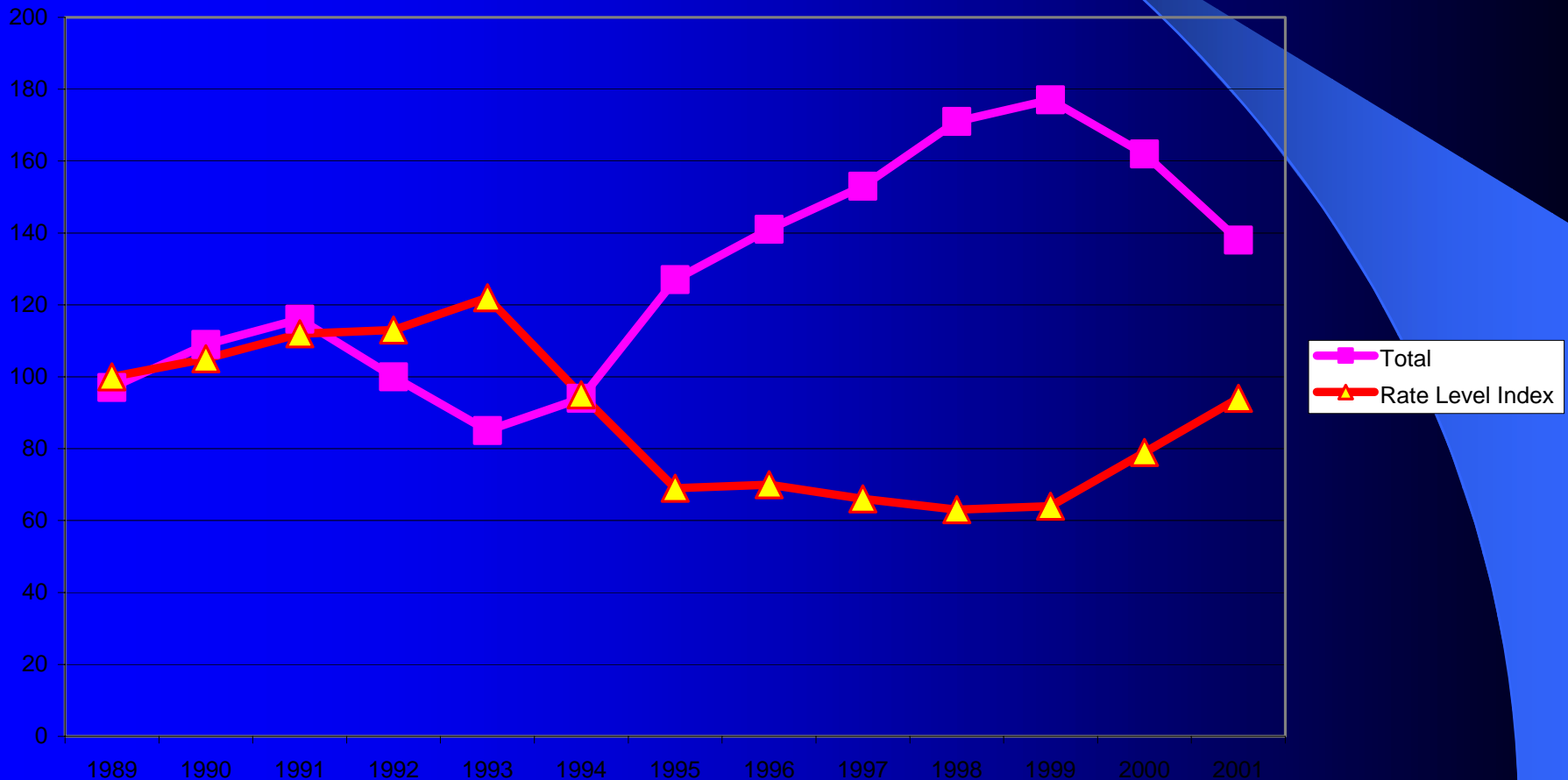


Accident Year Combined Loss and Expense Ratio



# As Rates Fall, Loss Ratios Rise

Comparison of Rate Level Index and Combined Loss and Expense Ratio



# RESOURCES FOR EMPLOYERS

- Website: [www.dir.ca.gov](http://www.dir.ca.gov)
- Publications – many free; many in other languages
- Toll free information on workplace safety & workers compensation
- Email: [info@dir.ca.gov](mailto:info@dir.ca.gov) (write to us!)
- Wage & Hour Orders by industry and transcripts of IWC hearings available at [www.dir.ca.gov/IWC/iwc.html](http://www.dir.ca.gov/IWC/iwc.html)

# DIR Toll Free Numbers

- Minimum wage info: 1-888-275-9243
  - (1-888-ASK-WAGE)
- Garment industry info: 1-800-803-6650
- DOSH Consultation: 1-800-963-9424
- Workers Comp HCOs: 1-800-277-1767
- WC Info & Assistance: 1-800-736-7401
- QMEs and QME Panels: 1-800-794-6900
- Tip line on QMEs: 1-800-999-1041

# HOW TO REACH US

- PHONE – SF: 415-703-5050;  
Sac: 916-324-4163
- FAX – SF: 415-703-5059; Sac: 916-324-8394
- Website: [www.dir.ca.gov](http://www.dir.ca.gov) or  
[www.info.dir.ca.gov](http://www.info.dir.ca.gov)
- ***Help us develop more resources that meet  
your needs for learning how to comply with  
California workplace standards laws!***

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